TRANSLATION FROM FRENCH REF: A19835/CIT

IN THE MATTER OF THE ONTARIO HUMAN RIGHTS CODE

and

THE COMPLAINT FILED BY MRS. LYNE LECLAIR AGAINST DR. ARMEL ROBERGE

DECISION

Mr. David A. Bertschi (Counsel) For the Ontario Human Rights Commission

Mr. Bernard Manton (Counsel) For the Defendant, Dr. Armel Roberge

INTRODUCTION

In compliance with the Human Rights Code, R.S.O. 1990, Chap. H. 19 (hereinafter called the *Code*), the Ministry of Citizenship appointed me on March 9, 1993 to preside over the board of inquiry set up to hear the complaint filed by Mrs. Lyne Leclair on January 9, 1989. Mrs. Leclair alleged, at the time, that she was a victim of discrimination for reason of sex on the part of the defendant, Dr. Roberge. A board of inquiry was called for April 8, 1993. With the approval of the parties, the evidence was heard on July 30, 1993, in Ottawa.

Dr. Roberge hired the complainant, Lyne Leclair, in April of 1988, to work four days a week as a dental-assistant at a salary of $300 a week. Mrs. Leclair informed Dr. Roberge in October of the same year that she was pregnant. On October 17, Dr. Roberge advised Mrs. Leclair that his wife, Monique Roberge, would be returning to work for him, and he terminated her [Mrs. Leclair] employment, giving her two weeks' notice. Mrs. Leclair then went to see the Ontario Human Rights Commission (hereinafter called the *Commission*), filing a complaint in the matter on January 9, 1989.

The complainant claims she was dismissed by the defendant because she was pregnant and that he infringed s. 4 (1) and 8 of the *Code* in not respecting her right to equal treatment in the matter of employment without discrimination because of sex. Sub-section 9(2) of the *Code* is also pertinent to this complaint.

The sections of the *Code* at issue here provide as follows:

4. (1) (sic) [1990, Chap. 19, 5. (1)]
Every person has a right to equal treatment with respect to employment without discrimination because of [...] sex [...]. 1981, Chap. 53, par. 4 (1); 1986, Chap. 64, par. 18 (5).

8. (sic) [1990, Chap. 19, 9. (2)]
No person shall infringe or do, directly or indirectly, anything that infringes a right under this Part. 1981, c. 53, s. 8.

9. (2) (sic) [1990, Chap. 19, 10. (2)]
The right to equal treatment without discrimination because of sex includes the right to equal treatment without discrimination because a woman is or may become pregnant. Part II, 1986, Chap. 64, par. 18 (7).

The defendant denies that he dismissed the complainant because she was pregnant or because of serious disagreement between them on the subject. It is necessary to examine quite closely their respective testimonies.

EXAMINATION OF EVIDENCE

The complainant has testified that when a pregnant patient came in for an appointment in September, Dr. Roberge stated, in front of his secretary-receptionist, Brenda Brazeau, that

he would not have a pregnant woman working in his office. He added that he had once interviewed a pregnant woman for the position of dental-assistant and that he hadn't hired her because she was pregnant. To this, according to the complainant, Mrs. Brazeau replied that women who worked for him would therefore never be able to plan to have a family. Dr. Roberge didn't answer. (See transcript of testimonies, page 5.) The complainant also emphasized that, even though she had always found Dr. Roberge to be demanding, impatient and even cold, she had noticed a change in their relationship from the time she told him about her pregnancy until her dismissal. From the moment she told him her news, she sensed "there was a conflict, things weren't the same anymore." Dialogue between them was no longer the same and Dr. Roberge "seemed upset about my being pregnant." (See transcript, page 8.)

Mrs. Leclair's testimony continues on pages 8 to 10 of the transcript:

"I continued working, then on October 17 - it was half past one in the afternoon [...] - [he] called me in to his office and told me his wife would be coming back to work for him because her physician had recommended [she) go back to work for medical reasons [sic].

The following day [October 18] I went to talk to Dr. Roberge and asked him if his wife would be coming back to work four days a week. He said no. So I said: 'Then can I work the other two days a week since I don't have a job - at least that'll give me something.' He said: 'No, it's not worth it as you'll lose it in a couple of months when you go on sick leave. I'll have to train a girl for a couple of months.' Then he said it wouldn't be worth it. But it was worth it to me as I didn't have a job; I was pregnant and it's not easy to find work when you're pregnant, especially in a dental office [...]

He gave me two weeks' notice as of October 17. [...] I worked the two weeks. It was fine after that; it was okay."

Dr. Robert flatly denied making the comments attributed to him by Mrs. Leclair, regarding the hiring of pregnant women in his office. He testified the complainant had been hired full-time but had been let go as Mrs. Roberge was coming back to work. During the main hearing, Dr. Roberge admitted the complainant had asked to work two days a week instead of four but that, by that time, he had already hired somebody else for the two days. (See transcript, page 90.)

The *Commission* has the burden of establishing, according to the balance of probabilities, if there was discrimination against the complainant because of her pregnancy, and therefore her sex. If the complainant's version of the facts is accepted, the *Commission* will obviously have succeeded in relieving itself of its burden of proof. On the other hand, if the defendant's version is correct, there would be no need to infer there had been discrimination. The success of the complaint rests entirely on the credibility of the witnesses and their testimonies.

While Mrs. Leclair's testimony proved to be coherent from the start and was consistent with her complaint of January 1989, Dr. Roberge was at times hesitant and not too convincing, contradicting himself in many respects. Moreover, his remarks did not corroborate the answers previously given in the Respondent's Questionnaire signed by Dr. Roberge on July 19, 1989. (The Respondent's Questionnaire is the document in which a defendant responds in detail to the allegations against him.) Except for the testimony of Mrs. Brenda Brazeau, I would have no hesitation in accepting the complainant's version of the facts.

Mrs. Lyne Leclair and Mrs. Brenda Brazeau became friends while working together and remained friends for some time after the complainant's dismissal. They therefore had an opportunity to discuss the complaint after it had been filed. Mrs. Leclair has testified that Mrs. Brazeau told her she didn't want to get involved in the matter inasmuch as she would have to continue working for Dr. Roberge. She had even said she intended to say she didn't remember hearing Dr. Roberge say anything about the hiring of pregnant women in his office. The following exchange, during cross-examination of the complainant by counsel for the defence, is pertinent:

Q You don't recall her saying she was not there during the conversations in question?

R. No, she told me ... she knew she was there, she said that ... she told me she was going to tell the *Human Rights Commission* that she didn't remember anything, because she didn't want to be involved. Then, she called me one night and we talked, then she spoke to Phyllis Bourne [an officer of the *Commission*] and told me she had told them she didn't remember, because she had to continue working with Dr. Roberge. She had worked with Dr. Roberge for ten years. I told her: "All you have to do is tell the truth;" she said: "No, I have to go back to work." She said: "You're not going back, I am.

Q. Didn't she instead say that Dr. Roberge had never said any such thing in her presence?

R. No ...

Q. Didn't you say something to her like: "You talked to the *Commission* and I thought you were my friend and here you are trying to scuttle me?"

R. No, I didn't say, "You're trying to scuttle me", no.

Q. You didn't say that?

R. No. I said: "All you had to do, Brenda, was tell the truth." Then she said: " I have to go back and work with Dr. Roberge; what kind of atmosphere do you think I'd be working in." We never broached the subject again, after that, as I was very disappointed to think she would say she didn't remember. All she had to say in the end was the truth.

At the time of her testimony, Mrs. Brazeau did not take as neutral a position as just being unable to remember the event. Instead, she flatly admitted that Dr. Roberge had never in her presence said, "there'd be no pregnant women working in his office". She added that in her 13 years working with Dr. Roberge, she had never before heard him utter such a remark. During

her cross-examination she, nevertheless, never denied the fact that at the *Commission* inquiry, she had just said she couldn't recall any such conversation. She explained this discrepancy saying that the discussion with the *Commission* had taken place over the telephone and that, at the time, there had been a number of patients in her presence. She added she was under some pressure at the time. (See transcript, pages 78 and 79.) During the main hearing, counsel for the defence had asked for her comments concerning the following statement: "Lyne Leclair states you did not want to be involved in this matter because you had to go back to work with Dr. Roberge and that this is why you didn't want to say anything." Mrs. Brazeau replied: "No, I was never worried about losing my job." (See transcript, pages 72 and 73.)

The defendant called a final witness to testify on Dr. Roberge's attitude about employing pregnant women in his office. Mrs. Potvin was working for Dr. Roberge as a dental-assistant in July of 1969 at the time she became pregnant. She continued working until her 7th month of pregnancy. She left her job at that time, but no information was provided concerning any agreement or arrangements related to her departure. This point was not raised during the cross-examination. All we know is that she gave birth to a second child before going back to work for Dr. Roberge in the spring of 1973. She held this position until March 1976. She testified she had never heard Dr. Roberge say he didn't want any pregnant women working for him in his office.

In my view, Mrs. Potvin's testimony doesn't do much to help the defendant's case. The real question raised by the complaint is not to determine whether Dr. Roberge found it intolerable or not to have pregnant women working in his office but rather to determine whether Dr. Roberge dismissed Mrs. Leclair and refused to keep her on for the two days his wife would not be working in his office, because of the inconvenience of having to train someone else to replace her during her maternity leave. Inasmuch as Mrs. Potvin did not return to work until a few years later, there was probably no agreement between her and Dr. Roberge to the effect she would take only a brief maternity leave before coming back to work. The inconvenience of having to train someone new to replace a pregnant employee is the same whether this is done immediately or seven months' down the road. The inconvenience would be different if the

pregnant employee decided to exercise her right to return to work after her maternity leave, but this point is not at issue here.

Whose testimony is more credible? Dr. Roberge and Mrs. Leclair are the two interested parties here. Mrs. Brenda Brazeau's testimony cannot be considered completely independent or disinterested just because she has claimed she was not influenced by the fact that her working relationship would be continuing with the defendant. If Mrs. Brazeau's testimony is accepted as genuine, then we have to ask ourselves why Mrs. Leclair (who was living in Hull in the province of Quebec at the time) would have gone to the trouble of coming to Ontario to file a complaint before the *Commission* with a story, fabricated from start to finish, when she must have known such a story was doomed to failure. Did she think Mrs. Brazeau would back her in any sort of lie she chose to maintain before the *Commission*? Isn't it more conceivable for someone, intent on pursuing such a course of action, to ensure she had a prior talk with the person who could act as her accomplice in corroborating her stories to make sure that person's testimonies were consistent with her own? The complainant's testimony concerning other incidents seems more credible than those of the defendant. It seems unlikely she would fraudulently make up the whole incident of the month of September. In the case of Mrs. Brazeau, on the other hand, she could very possibly not have remembered Dr. Roberge making the remark about the hiring of pregnant women in his office, and now be convinced that Dr. Roberge never said such a thing in her presence. In my view, however, it is more likely that Mrs. Brenda Brazeau made an honest mistake.

With regard to the testimony of the defendant, I begin with his response to the allegations made in the complaint of Mrs. Lyne Leclair, who claims, among other things:

> 10. On October 17, 1988 he [Dr. Roberge] gave me two weeks notice, telling me that his wife was returning to work as his assistant for two days a week, and he would hire someone else for the remaining two days.

11. The following day, I asked him if I could work the two days a week his wife was not working.

12. He said no, because I would be leaving in a few months for maternity and he would have to train another person for only a few months.

In the Respondent's Questionnaire (see explanation above) filed in July 1989, Dr. Roberge responded to these allegations as follows:

10. My wife, who was my assistant for 27 years, decided that she would come back to work and this was recommended by her own physician.

12. Lyne Leclair was hired on a 4-day per week and at the time notice was given to her, her services were no longer required.

12. Same as number 11.

The reason given by Dr. Roberge at the time to justify his refusal to hire the complainant on a two-day a week basis is simply that the working arrangement agreed to with Mrs. Leclair was for four days a week and that her services were no longer required on that basis. In responding, Dr. Roberge did not deny that the complainant had asked to work two days a week, that this request had been made the day after she had been dismissed (i.e., October 18), and that he intended to hire someone else for those two days. We can rightly assume that such a person would require a period of training. Dr. Roberge did not suggest in the Questionnaire that Mrs. Leclair had put forward her request on the last day nor that Mrs. Leclair was incompetent or that her work left something to be desired. Although Mrs. Leclair did tell him of her interest to work two days a week and of her needs, the only excuse proffered by Dr. Roberge was that the complainant was hired to work four days a week, as if this were an insurmountable obstacle to negotiating a new working arrangement. This purely technical response seems to me to be

inadequate and insensitive to the individual in question. When testifying, the defendant abandoned this excuse only to adopt another one.

At the beginning of his testimony concerning his refusal to hire the complainant on a two-day a week basis, Dr. Roberge seemed to link his decision to a personality conflict which, according to him, came to light two weeks after the complainant's dismissal.

All the witnesses have acknowledged that Dr. Roberge is uncompromising, impatient, cold, and sometimes even a bit "stupid". He has had so many dental-assistants during his career that he can't remember how many anymore. Mrs. Brazeau testified that since she started working for Dr. Roberge, at least a dozen dental-assistants have come and gone. (See transcript, page 62.) The defendant's counsel suggested in his defence that this tremendous turnover in staff is certainly indicative of a very difficult employer. Mrs. Brazeau testified that Mrs. Leclair had admitted a number of times that since coming to work for Dr. Roberge, she had found him difficult, cold and even "stupid", at times. Neither Mrs. Brazeau nor Dr. Roberge, however, intimated that Mrs. Leclair's conduct, prior to October 17, was unsatisfactory or unacceptable, or that her working relationship with her employer was different, to any extent, from that of the people who had preceded her in this position. Mrs. Brazeau asserted, during the hearing, that she had not noticed any change in Dr. Roberge's attitude toward Mrs. Leclair after she had told him she was pregnant. On the other hand, she did not mention any change in attitude on the part of Mrs. Leclair either. (See transcript, p. 67.)

Questioned by his lawyer concerning Mrs. Leclair's opinion that he had distanced himself from her and had become more difficult after learning she was pregnant, Dr. Roberge stated the following (page 89 of the transcript):

> "My attitude had probably changed a bit inasmuch as her own attitude also had changed. She began to display a nonchalance, she dragged her feet, she would answer me in a manner not normally used with one's employer. So there was a personality conflict at that time."

It seems a bit strange that such a change in attitude should come to light just when Mrs. Leclair announced to Dr. Roberge that she was pregnant and when she was especially vulnerable because her husband had lost his job and she was expecting her second child. Shortly after this response from Dr. Roberge, his counsel asked him why he had given Mrs. Leclair a notice of dismissal. In responding to this question, Dr. Roberge made no allusion to the "personality conflict" he has just mentioned. Instead, he indicated that the reason was that his wife was planning to come back to work. The continuation of this exchange between the defendant and his counsel, which appears on page 90 of the transcript, is produced below:

Q. Did she ask you if she could work for you for two days instead of four?

R. Yes, she asked me that; by then I had already hired someone else for the two days.

Q. And then, when you gave her her notice, what did Lyne Leclair say?

R. She said she was very glad to leave because she didn't like working for me.

Q. So, it would seem this was a satisfactory arrangement for both parties at the time?

R. That's right.

We must note the incompatibility between the statement of the defendant, that the complainant had asked to work two days a week and this latter statement that, "she was very happy to leave because she didn't like working for me." One point that seems even more significant to me, is that despite the personality conflict to which Dr. Roberge referred, he did not suggest that this conflict was the reason or even one of the reasons for refusing to hire Mrs. Leclair to work two days a week. I am therefore unable to accept the claim of his counsel, reproduced on pages 123 and 124 of the transcript, that:

"(...) based on the evidence of Dr. Roberge and of Brenda Brazeau in their testimony, these two people, Dr. Roberge and Lyne Leclair, did not get along. When you hear the testimony, it's like fire and water, and they don't see eye to eye. This is due to the fact that Mrs. Roberge was coming back to work and due to the fact they didn't get along that these incidents arose."

Although Dr. Roberge claimed there was a personality conflict with the complainant, in the end, the reason he gave for her dismissal was the fact that his wife was planning to come back to work. The reason he refused to hire the complainant to work two days a week is no longer the one provided in the Respondent's Questionnaire, i.e., the unreasonable technicality that Mrs. Leclair had been hired to work four days a week, nor any question of a personality conflict, but rather the fact that another person had already been hired for the two other days in question. It should be noted that Dr. Roberge could not have already hired somebody else by then unless he had started recruiting well in advance of that date. Yet he never said anything about this. When did he start looking for the person who had already been hired on October 18? Immediately after he learned that Mrs. Leclair was pregnant, perhaps? And when did this person start to work? When the counsel for the *Commission* asked Dr. Roberge why he had waited until his appearance before the board of inquiry to divulge this reason, Dr. Roberge could only answer: "I don't know."

During cross-examination on that point, Dr. Roberge indicated the complainant had asked if she could work two days a week instead of four when he gave her her final paycheque. (See transcript, pages 101 and 102.) Shortly after, the counsel for the *Commission* asked him:

Q. (...) in all of the Human Rights documents, you never once mentioned that you had told Mrs. Leclair that: "I can't hire you two days a week because I have already hired someone else." Why didn't you indicate that in the documents?

R. I don't know.

Q. I suggest that it's because it wasn't true.

R. I don't think so.

Further on (pages 103 and 104), the counsel for the *Commission* asked him:

Q. (...) the reason you didn't hire her on a two-day a week basis to cover the time your wife would not be working, Mrs. Leclair tells us, is because you said: "Well, I'll have to train somebody else. I can't hire you, you're pregnant, we'll have to train someone new, it's not (...) worth the trouble." Is it possible that that's what you said, that's what you're telling us?

R. That's possible, but I don't remember.

Another testimony that would seem to be pertinent to the case in point is on page 18 of the transcript. Mrs. Leclair states:

"(...) after the birth of my baby, Brenda Brazeau (...) called me to tell me she had talked with Dr. Roberge and that he had tried to find out if she had been in touch with me. Brenda told him she had. Then he asked her if she knew whether I was working or not and she told him no: 'No, I don't think she's working.' He asked her: 'She must have had her baby by now. Ask her if she'd like to come back to work.' When she called me, that's what she told me he had said. I told her to tell him I wasn't interested in going back."

Questioned on the subject of this conversation by counsel for the defense, but only concerning the time of this talk and not its content (see transcript, page 42), Mrs. Brazeau confirmed the telephone call, but gave a fairly different version. Her testimony, appearing on pages 68 to 69 of the transcript, appears below:

Q. What was this conversation you had with Lyne Leclair on the subject of employment all about?

R. I thought that if she changed her attitude, she could go back to work two days a week.

Q. You thought if she changed her attitude, you said, she could go back to work two days a week?

R. Yes.

Q. And, had you previously discussed this with Dr. Roberge?

R. No. I discussed it the next day, but that's not what he wanted.

Q. Was Lyne Leclair prepared to accept this position to work two days a week?

R. No.

According to Mrs. Brazeau, Lyne Leclair didn't tell the *Commission* the truth. She tried to get her involved in this fraudulent business. Still according to Mrs. Brazeau, when she refused to go along with Mrs. Leclair's lies, Mrs. Leclair told her: "A fine friend you are (...). You're trying to scuttle me." When counsel for Dr. Roberge asked Mrs. Brazeau what she had said in reply, she answered: "I pointed out that a friend wouldn't ask me to lie about something I didn't know anything about."

Based on this testimony, it seems strange that Mrs. Brazeau, who apparently had ended her friendship with Mrs. Leclair, would suddenly call the latter, after the birth of her baby, to find out if she would consider going back to work for Dr. Roberge - unless she had undertaken to do so at the request of Dr. Roberge himself. It should be remembered that, at the time, both

Dr. Roberge and Mrs. Brazeau were aware that Mrs. Leclair had filed a complaint with the *Commission*. What made Mrs. Brazeau think Dr. Roberge might be prepared to re-hire Mrs. Leclair in view of the circumstances? There's room for speculation here. Was it because the doctor was again in need of a dental-assistant and he knew Mrs. Leclair was no longer pregnant? Was is because, in hindsight, he felt sorry for Mrs. Leclair and her special circumstances? Was it to jeopardize Mrs. Leclair's case. Why did Mrs. Brazeau think Dr. Roberge was prepared to re-hire the complainant? If the testimonies of Mrs. Brazeau and of Dr. Roberge are true, it seems altogether unreasonable then for Mrs. Brazeau to think that Dr. Roberge would be willing to take Mrs. Leclair back as his assistant. It also seems unlikely that Mrs. Leclair would want such an arrangement. Therefore, if Mrs. Brazeau had any doubt about Dr. Roberge being willing to re-hire Mrs. Leclair, then what was the point of the call? In light of these ambiguities, I accept Mrs. Leclair's version of the facts concerning this conversation. This provides another reason for choosing the testimony of the complainant.

Something else bothers me concerning the complainant's dismissal. The initial position of Dr. Roberge was that his wife's physician had suggested she return to work at the office. But in a letter dated April 21, 1992 (Exhibit 1, Tab 4), her physician, Dr. Hughes Richard, stated as follows to the *Commission*:

> [...] I am not her doctor anymore. I saw this patient between August 08th, 1988 and January 31st, 1989, and I have not seen this patient since.
>
> I took great care to read my initial exhaustive psychiatric consultation and read all of my progress notes. I never advised her to go back to her job. I don't have any date available in my chart, but I remember that at the end of the treatment, she had decided to go back to work as an assistant for her husband. She informed me of that and I did not disapprove her. I felt that this was good for her health. [...]

Dr. Roberge testified he was under the impression that his wife would be coming back to work on the recommendation of her physician, but after reading Dr. Richard's letter, he was

made aware that it was his wife instead who had initiated this step, with the subsequent approval of her physician. This seems to be the only adequate explanation since he didn't try to find out whether his wife was returning to work for reasons of health or simply because she wanted to. In fact, Mrs. Roberge's reason for returning to work, assuming this did not conflict with the *Code*, is not pertinent to the case in point. This letter seems to suggest, however, that Mrs. Roberge's treatment continued until January 1989 and that it was then that she decided to go back to work. On the other hand, it was in October 1988 that Dr. Roberge gave this as the reason for dismissing Mrs. Leclair. Dr. Richard's letter was not read in its entirety at the hearing and this inconsistency was not raised. When exactly did Mrs. Roberge tell her physician that she had decided to go back to work in her husband's office? At what point after Mrs. Leclair had left did Mrs. Roberge go back to work?

CONCLUSIONS

The *Commission's* position is that the complainant's dismissal and Dr. Roberge's refusal of to re-hire her two days a week constitute two separate incidents of discrimination, each resulting in mental suffering. If, however, pregnancy was not one of the reasons for the actions being contested in the complaint, the complaint could not be sustained.

For the above reasons, I firmly believe that, on October 18, the defendant refused to hire Mrs. Leclair to work two days a week because she was pregnant. Even if we accept that Mrs. Roberge voluntarily returned to work in November of 1988, with the approval of her physician and that, therefore, Mrs. Leclair's dismissal was not necessary to accommodate her, in light of the evidence we cannot accept that his wife's return to work was the sole reason for Mrs. Leclair's dismissal. I have accepted the testimony of Mrs. Leclair concerning the comments made by Dr. Roberge in September of 1988. Moreover, the short period of time between the date the pregnancy was announced and Dr. Roberge's decision to dismiss her appears to be more than a coincidence. I have also recognized that it was because of the inconvenience of training that went along with the pregnancy that he refused Mrs. Leclair's request, on October 18, to

work two days a week. To have considered this inconvenience just when Mrs. Leclair announced to him she was pregnant suggests that this inconvenience was at least one reason why Dr. Roberge gave Mrs. Leclair her notice of dismissal on October 17.

My conclusion is that the defendant infringed one of the rights of the complainant recognized in the *Code*. I do not, however, consider his behaviour as two separate incidents of discrimination. Having decided to get rid of her because of the inconvenience resulting from Mrs. Leclair's pregnancy, he gave her two weeks' notice on October 17 and the next day he refused to hire her to work two days a week simply because he wanted to uphold his prior decision.

PLAINTIFF'S RECOURSE

On finding that the defendant infringed a right of the complainant, I now must consider appropriate recourse under the circumstances. Sub-section 40 (1) of the *Code* provides as follows:

> 40. (1) Where the board of inquiry, after a hearing, finds that a right of the complainant under Part I has been infringed and that the infringement is a contravention of section 9 * by a party to the proceeding, the board may, by order,
>
> b) direct the party to make restitution, including monetary compensation, for loss arising out of the infringement, and, where the infringement has been engaged in wilfully or recklessly, monetary compensation may include an award, not exceeding $10,000, for mental anguish. (1981, c. 53, s. 40(1))

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* Trans Note: Section 8 in original French document.

Two kinds of damages are provided for in this section. It is possible to award financial compensation for special damages (i.e., loss of salary) and also for mental anguish.

With regard to special damages, unfortunately I do not have all of the necessary information on hand to make a decision on the question. Mrs. Leclair indicated she had undertaken steps to find regular employment after her dismissal, but without success, until September 1990. After the birth of her baby, a placement agency for dental-assistants found her some temporary work as a replacement for persons on sick leave. She specified that, all in all, "I worked the equivalent of one month." Counsel for the defence suggested she may not have been steadfast enough in her efforts to find work, but he offered no proof in support of this allegation. He said nothing concerning the calculation for special damages. On this point, the plea of the counsel for the *Commission* was only as follows (page 121 of the transcript):

> [Mrs. Leclair] apparently worked seven and a half months and earned $300 (three hundred dollars) a week, to a total of $9,742 (nine thousand seven hundred and forty-two dollars) . She received unemployment insurance [in the amount of $344 every two weeks] for 11 months * and afterward, she apparently worked for nine and a half months." What I would suggest - and here I am not asking for the maximum amount of time but it's something to be considered - if you want me to say more on the subject, naturally I can give you more figures. [* Mrs. Leclair said thirteen months; see transcript, page 13.)

Under the circumstances, I would ask the parties to try and settle the amount of special damages between them and to send me their conclusions in writing fairly quickly for my approval. To this end, I would emphasize to the parties that the purpose of the legislation is *restitutio in integrum* and that, in principle, the injured party is entitled to receive damages for net salary loss occasioned by the infringement, with interest, commencing on the date the complaint was brought to the attention of the defendant. Amounts received during this period by the complainant, however, should be taken into account. If the parties are unable to reach

an agreement in the matter, the board of inquiry will hold another hearing as soon as possible to hear the additional and complete evidence of the two parties.

With regard to the mental anguish, I find that infringement on the part of the defendant was intentional and that this infringement resulted in moral prejudice for the complainant. Mrs. Leclair related what happened after her dismissal. Her husband had also lost his job; there was another older child; the whole family suffered from very serious financial difficulties. Mrs. Leclair had to borrow all the money she could from her family. Her husband had put money in a special account to pay for the house but, in Mrs. Leclair's own words, the family "was so much in debt that we had to use this money to pay everything we owed." She had to go to Saint-Vincent de Paul in Hull to get $50.00 vouchers to buy food. She stated: "It was awful, it was degrading to have to go to the grocery store with a voucher like that."

As previously mentioned, the *Commission* maintained there were been two infringements, and suggested $3,000 in damages for mental anguish on each count. I do not find, however, that the defendant's behaviour constitutes two separate incidents of discrimination. Having decided to get rid of Mrs. Leclair because of the inconvenience associated with her pregnancy, he gave her two weeks' notice on October 17. His refusal to hire Mrs. Leclair two days a week on the following day simply reflects his wish to stand by his previous decision.

While the complainant suffered mental anguish because of her dismissal, her family's financial difficulties were in large part due to the fact that her husband had also lost his job. In view of the stress and financial difficulties resulting from the infringement and the personal embarrassment she endured, I am of the opinion that damages for general or mental suffering in the order of $2,000 would be appropriate. On the other hand, since the mental anguish resulted after the dismissal and lasted all the time the complainant was out of work, I deem it inappropriate to award interest as of the date of the complaint. I prefer to award a lump sum taking into consideration all of the aspects of the infringement.

DECISION

For the above reasons, I find that the defendant, Dr. Armel Roberge, infringed a right of the complainant, Mrs. Lyne Leclair, stipulated in Part I of the *Code*, and that this infringement constitutes an infraction under section 8. [**] Therefore, this board of inquiry orders as follows:

1. THAT in accordance with the above directives the parties try to reach a settlement regarding the amount for special damages and that they present the results of their negotiations in writing to the board of inquiry in three weeks' time. If the parties fail to reach an agreement in the matter, the board of inquiry will hold another hearing as soon as possible to hear additional evidence from the parties and settle the matter.

2. THAT the defendant pay an amount of $2,000 (two thousand dollars), to the complainant, in compensation for the mental prejudice she suffered, with interest as of the date of this order.

Dated at Ottawa, this 23 day of September 1993.

(Sgd) H.A. Hubbard
Chairman

** Trans Note: See 1981, Chap. 53, s. 8.
1990, Chap. H.19, s. 9(2).